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# ◆ THE LOCAL ◆

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OPSEU Local 560 at Seneca College

December, 2012

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## McGuinty and the Right to Collective Bargaining

Larry Olivo, Chief Steward, OPSEU Local 560

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In our recently concluded round of bargaining, management feared a successful strike vote early in the semester so withdrew its many take-aways. Faculty, fearing a legislated contract strip looming on the horizon, opted overwhelmingly to ratify an agreement which left our collective agreement intact, but with no salary increase. There were only modest improvements for partial load job security, and we got a more detailed description of coordinator's duties. Hardly a good contract.

It is now clear, however, that the government is prepared to pass legislation that takes away the right to negotiate with the employer, and imposes the terms and conditions of employment at will. Whether McGuinty is ultimately successful will depend on how the courts look at the legislation in the upcoming constitutional challenge brought by the teachers. If the teachers are successful in their challenge, then the government will not be able to threaten us with legislation to dictate terms of employment in 2014. Hopefully there will be a decision on the court challenge when our time to bargain again arrives. Even if the teachers are not entirely successful, conditions in 2014 may be quite different from what they are today, making further legislation aimed at us politically difficult to introduce.

What the court might do can be deduced from existing case law. The short answer is that while the right to bargain collectively is not absolute, the Supreme Court of Canada has ruled in a series of four recent cases that s. 2(d) of the *Charter of Rights and Freedoms* guarantees freedom of association, and that includes the right to join together in a union to achieve workplace goals by engaging in meaningful collective bargaining.

In three of the four cases, *Delisle v. Attorney General of Canada*, *Dunmore v. Ontario, Attorney General of Ontario v Fraser*, the court focused on the issue surrounding the formation of a union, and the creation of a regulated collective bargaining regime. The Supreme Court of Canada held generally that s.2(d) of the *Charter of Rights and Freedoms* extended the right of freedom of association to having a union controlled by its members, and some structure that provided a foundation for collective bargaining. But it did not stipulate the type of employee organization that could be formed, nor did it prescribe a specific labour relations process. I note that the issues in these three union freedom of association cases, while they guarantee free and independent labour organizations, are not of direct concern to us.

It is the third case, *Facilities Subsector Bargaining Assn v. British Columbia (BC Health)* that addresses the very issues that are crucial for us—can the government simply impose contract terms, and terminate collective bargaining? In *B.C. Health*

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## Academic Freedom and a New Hiring Model

*Howard Doughty*

Now that the second shoe has well and truly dropped, the departure of Larry White has taken place, and Larry's "files" at King have been shifted to Dean DiSimone until a permanent Chair or Chairs can be found to assume control of Larry's entire portfolio. Whatever the particulars, Larry's departure offers us a rare opportunity to do something constructive for ourselves and for the college.

At Seneca, the process of hiring or promoting people for lower management positions and hiring people for both full-time and partial-load teaching positions has been inconsistent at best. When I was hired, I went through two interviews, one with three faculty members (presumably to generate a "short-list" of likely candidates) and one with the Campus Dean to make a choice among them.

I have served on similar committees and was involved in the hiring of both Brian Flack and Marino Tuzi a little over twenty-five years ago. As well, faculty members have previously been on committees involved in the hiring of managers, at least at the level of Chair; I was on such a committee when Tom Fleming was chosen to be Chair of English & Liberal Studies a little over a decade ago. I cannot speak for others, but in my view, these were three of the best hiring decisions that have been made regarding SELS at King Campus. We are poorer because all three have now gone.

On the other hand, at my first all-faculty meeting at Seneca, I was somewhat taken aback when the same Campus Dean who had a role in hiring me also gleefully informed the assembled multitude that, at Seneca, we have an "industrial model" and that there would be no foolishness about

professional pretensions when it came to knowing who was "boss." So, despite an occasional gesture toward the sort of collegial decision making that is the mark of an authentic postsecondary educational institution, most of the work at the college is performed under what I choose to call a "corporate model," which is rigidly hierarchical both in terms of the expression of institutional policies and practices and also in terms of the labour process.



Now, however, we are in a situation in which the possibility for authentic revitalization and renewal is, however unlikely, at least plausible. As Seneca transitions into a new phase of institutional development which is characterized by, among other things, the authority to grant degrees (e.g., the Bachelor of Child

Development) and the participation in joint degree programs with universities (e.g., the B.Sc.N. with York), a new, inchoate set of expectations is emerging.

Along with the right to grant degrees goes (or should go) a number of reforms to align the college better with its university counterparts. So, although the powers above us (i.e., those provincial entities which control or engage directly in collective bargaining on behalf of the colleges as a group with OPSEU) have steadfastly refused to address the matter, "academic freedom" is a concept that cannot continue to be contemptuously pre-dismissed. It is essential to any college worthy of the name, and especially pertinent when colleges like our own form partnerships with universities where academic freedom is important in principle, if not always in practice.

Likewise, while it is true that most universities are experiencing a form of organizational change

themselves and now engage in collective bargaining with their faculty, teaching assistants, support staff and others, the fact remains that university teachers exercise far more control over academic tenure and promotion, curriculum and internal departmental affairs. No one knows how these matters will play out in the near or distant future, but we do know that matters cannot stay as they are.

I propose, therefore, that we take this opportunity to display for all concerned our willingness to engage in an experiment. It is one that has been tried before (successfully, in my opinion) but which, in these transformational times, needs to be embraced again. It is this: whatever the plans for replacing Larry as Chair of the SELS at King, a process should be put in place to ensure meaningful faculty participation in the selection of the successful candidate.

How this might best be accomplished is a matter for joint management-faculty deliberation. Such a conversation should include faculty members, the Campus Dean and other management personnel as deemed fit by management itself. Who knows? If we were to become truly adventuresome, we might even include representatives of the OPSEU Local 560 executive. In any case, it should not be difficult (assuming good will and a common purpose) to work out the details.

It might, of course, be objected that such an innovation would run afoul of the Collective Agreement. This, I believe, is a red (or at least a pink) herring. I am not proposing a change in ultimate authority which remains with management. I am merely suggesting a more open and participatory management model. It has, as I have said, been done before and, lest we forget, even ex-President Stephen Quinlan gave lip-service to a similar notion about two decades ago (albeit under pressure from the provincial government).

It might also be objected that, given the relatively abrupt nature of Larry's departure, there is no time to invent a process; however, no worry about being "leaderless" for a while should deter us. The SELS

at King has gone through previous periods - once for almost a year - in which no Chair was in place and no permanent harm was done.

### **Academic Freedom...The Key to Quality Education**

Faculty often ask whether the chair can dictate what kind of evaluation to use, what teaching materials to use, or what content to include or omit from a course. Most faculty consider these kinds of issues to be a matter for professional judgment. A wise chair will leave these decisions to faculty, but under the current collective agreement the chair *can* tell you what to teach and how to teach and evaluate it. In fact, if the chair wants to hand you a script to teach from, he or she can do that, too.

While the colleges have borrowed "Chair" and "Dean" as job titles from the universities, those who fill these posts at the colleges bear little or no resemblance to their university counterparts. They are not chosen by department faculty, or academic senates; they do not necessarily have academic expertise in the areas they supervise, and their post-secondary education may stop well short of the credentials possessed by their university counterparts. Some will have had no post-secondary teaching experience at all. Sometimes their decisions will be sensible and educationally appropriate, but sometimes they will be based on finding the cheapest way to run students through an educational assembly line rather than the best way for students to master a subject or skill. If we are now to compete with universities in offering Bachelor degrees, we need to have the experts in education—the faculty that teach the programs—making academic decisions affecting program quality

This is why academic freedom was a central demand in the last round of bargaining. And why management refused to even discuss it. To us, it is central to delivering high quality education. To them it is about power, control, and maintaining the top down command structure of an educational factory. And that is why we must return to this issue in the next round of bargaining in 2014.

## College Roundup: News from Other Colleges

*Larry Olivo, Chief Steward, OPSEU Local 560*



We hear from Canadore College that management has laid off all but one of their counsellors, and replaced them with a therapy dog. That's right; a student with learning disabilities, or psychological problems, or who is in crisis can go in to

see Fido the counsellor, a German Shepherd housed in the residence. It is not clear whether students have to make appointments or not, and they are expected to overlook the fact that German Shepherds are often used as guard dogs.

At a number of colleges, full-time faculty numbers have dropped, while management numbers continue to grow.

With the bullying language now in Article 4, there are increased numbers of grievances filed involving bullying of employees by managers across the system.

Article 2 staffing grievances have been filed in many colleges to address the failure of the colleges to give preference to the creation of full-time positions as called for in the Collective Agreement. In some cases, there have been settlements--Niagara College's settlement resulted in the hiring of 64 new full-time faculty. At other colleges and here at Seneca management has dug in to stall the arbitrations and put off the day of reckoning.

At LaCité, apparently, students are expected to resort to grunts and gestures to communicate as the language department providing French and English language instruction has been closed by management, and its employees scattered among other departments.

As faculty in applied degree programs at various colleges are increasingly involved in research, it appears that some colleges do not SWF or

properly recognize such work. Watch how fast the colleges will claim credit and a piece of the action if faculty research results in a marketable product. Expect to see issues arising with respect to copyright claims by the college on faculty creations. Suggestion here: do it on your own time and your own dime.

A number of colleges, including Seneca, are engaged in joint program offerings with other colleges. We will be running some of the Flight programs from Fleming in Peterborough. Sheridan College Institute of Technology is doing some of its stuff in conjunction with Mohawk. Those involved in the joint programs inevitably thought of calling the co-venture "ShIThawk". We think that's a little indelicate, but options there are few. Just for fun, what if we had a little contest to come up with our own name?

What should the Seneca Flight Programs offered with Fleming College's involvement be called? Send your entries to: [union@opseu560.org](mailto:union@opseu560.org)

While we can be irreverent at times, and take the liberty of poking a little fun, it is the duty of the union to manage the dynamic give-and-take with management. Sometimes it seems there is more management take than give, but by continually asking for our Collective Agreement to be upheld, we ensure the negotiated benefits for our members remain and are enforced.

As always, we appreciate your questions and comments to the e-mail above.



## Your WMG Representatives

If you have any questions about your workload, you should feel free to contact any Local 560 steward. In addition, the four union representatives on the Workload Monitoring Group can provide expert 'insider' advice. The current members are:

**Larry Olivo:** 491-5050, Ext. 22814  
lolivo@sympatico.ca

**Paul Matson:** 491-5050, Ext. 22434  
pmatson@opseu560.org

**Jonathan Singer:** 491-5050, Ext. 26010  
jsinger@opseu560.org

**Daria Magas-Zamaria** 491-5050, Ext. 33281  
dariazamaria@gmail.com

### If you are a teacher who does not have a 4-year university degree, this is for you:

Teachers without a 4-year university degree cannot progress to the top step and the top salary. Depending on qualifications, you may top off at step 16, 17, 18 or 19. That's a minimum loss of \$5393 and up to \$13486 annually! This has a significant impact on lifetime earnings, and on pension.

But there is a way to get to the top step. As you get near to your current top step, you can enroll in the In Service Teacher Training Program, a part time program that will, if you complete the program give you access to the maximum salary steps. If you have more than 15 years of service when you enroll you will immediately progress one step on enrolment— that's \$2696.

For more information contact the local at [union@opseu560.org](mailto:union@opseu560.org), or go to the OPSEU central website link to the In Service Teacher Training Program at [http://www.opseu.org/caat/caat\\_ac/training.htm](http://www.opseu.org/caat/caat_ac/training.htm)

*Happy Holidays from your Local  
Executive Committee. Wishing  
you all the best of the  
season!*



<http://www.facebook.com/pages/OPSEU-560/181935308386>



<http://www.twitter.com/OPSEU560>



**THE LOCAL** is a publication of OPSEU Local 560, the faculty union of Seneca College. Please feel free to copy any original material with appropriate credit.

We welcome submissions and correspondence, which should be sent to Barbara Paterson, Secretary, OPSEU Local 560, at Newnham Campus or at 2942 Finch Avenue East, Suite 119, Scarborough, Ontario, M1W 2T4, or by fax to (416) 495-7573, or by e-mail to [union@opseu560.org](mailto:union@opseu560.org) Call us at (416) 495-1599 or visit the Local 560 Web Site at: <http://opseu560.org>



# Directory of Stewards and Officers 2012-2014 Term

OPSEU Local 560

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## What's Up with the CAAT Pension Plan?

*File under: "Management Logic"*

From: <http://www.caatpension.on.ca/en/about-us/news>

### Sponsors maintain control of Plan governance

After extensive and successful consultations with senior government and elected officials, the CAAT Plan has negotiated an agreement with the province that provides additional contribution stability and maintains Sponsors' control of Plan governance, funding and investment decisions.

As a result of reaching a negotiated agreement, the Plan has secured a number of outcomes critical to the ongoing stability and good governance of the Plan. We have negotiated:

- Exemption from having to pool Plan investments in any new provincial 'pooled fund'.
- Temporary 4-year valuation cycle, up from the previous 3 years. This allows more stability by

providing longer periods to manage investment market and interest rate volatility.

- Exemption from any proposed special legislation determining funding decisions, which would have significantly impacted the Jointly Sponsored structure and decision-making that has been key to the Plan's stability.

To secure these outcomes, the Plan will adjust the Funding Policy by adding a temporary "Level 1" which will be in effect until December 30, 2017.

Our Sponsors' Committee strongly believes the Plan has achieved the best possible outcome to secure the pension promise.

Read more: <http://www.caatpension.on.ca/en/about-us/>

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## Recovering & Returning to Work: Take Local Reps with You

If you get the flu and stay home to hork and snorffle for a couple of days, coming back to work shouldn't be complicated.

But if you are off for more than 3 days you are required to provide a medical note--when you do, remember that you are not obliged to provide a diagnosis. What you were ill with is none of the college's business, unless it was a reportable communicable disease.



If you are off for a considerable period, two issues arise. If you are seriously disabled and cannot return to work within 6 months you are likely eligible for Long Term Disability. Secondly, if you have been injured or have been ill with something that results in limitations on your being able to do your job, you have a right to return to work and the college is by law obliged to accommodate your limitations unless it causes the college undue hardship. The college has a so-called "Wellness Office" which handles return to work and accommodation issues. Long Term Disability is administered by Sun Life. In both cases, people who are not necessarily in the best of health are required to complete forms, provide information, some of it confidential, negotiate with the college or Sun Life and make judgements, and decisions that they do not always have enough information to make.

While the college does not disclose to the union who is ill, or who is negotiating with the Wellness Office, the college will contact the union if you ask that the union reps be involved. You should know that you have a right to union assistance at every step of the way when dealing with Sun Life or the Wellness Office. If we become involved we keep your business confidential. Beth Agnew a Local 560 steward is on the Joint Insurance Committee that deals with issues with Sun Life. We also have members on the college's Return to Work Committee, and work closely with the college to advocate for faculty who are returning to work with accommodation. But to do this we have to know you are there, and we won't unless you tell us.

Recently, a faculty member who had suffered some physical injuries was working out her return to work. She had not involved the union, but was asked by the Wellness Office if she wanted union representation at the meeting with the supervisor and the Wellness Officer. She said she did. And as she later noted, she was glad she had. One issue involved working at home a couple of days a week to facilitate treatment and minimize driving. The supervisor's initial response was that she had to be physically at the college to do all of her work. The union rep was able to convince both college officials that some of the work could be done off site, and that working at home was not simply goofing off. Had the union rep not been there the faculty member, still in recovery, would have had to fight an uphill battle on her own.

Union contacts:

Vice-President Equity, Beth Agnew [member, Joint Insurance Committee]

Chief Steward Larry Olivo [member, Return to Work Committee]



## PSST.....

If you think having a therapy dog as a counsellor at Canadore is ridiculous we are not far behind, though we haven't turned the job over to the animals....yet.

At Seneca a student will be expected to either have learning disabilities or psychological issues, but not both. A student with learning disabilities apparently will have to make an appointment with a counsellor who is only allowed to counsel on that issue. If this student also has psychological issues he or she now has to make a *separate* appointment with a counsellor who may be allowed to counsel only on *that* issue. This is neither practical nor in the students' best interests. It handcuffs our counselling staff from doing the job they know best and can do best.

We hear the new VP academic (who is not, as far as we know, an academic) is planning to make 50% a passing grade, down from 55%.

The college has actively been taking the credit for its employees who make donations to the United Way. This makes the college look all warm and furry, helping the less fortunate and those in need. This is the same college that has cut virtually all of its non-post-secondary programs, the very programs that are needed and used by those who are less fortunate and in need. Can you spell h-y-p-o-c-r-i-s-y?

(Continued from page 1)

the unions were focused on stopping interference by the BC legislature with collective bargaining rights that the unions already had. British Columbia did precisely what Ontario is now doing: it legislated away previously-bargained rights and dictated the terms and conditions of employment by legislative fiat—in effect it put an end to collective bargaining for that round of bargaining. Importantly, the Supreme Court of Canada ruled that s. 2(d) of the *Charter* “protects the capacity of members of labour unions to engage in collective bargaining on workplace issues.” Further, the court determined that some of the legislative provisions interfered with the terms of existing collective agreements and that prohibited future bargaining on important issues, and this clearly violated the *Charter*. In this case the Supreme Court created a right to “the very process that enables them [employees] to pursue workplace objectives by engaging in meaningful negotiations with the employer.” The question in every case is whether the process of voluntary, good faith, collective bargaining between employees and the employer has been or is likely to be significantly and adversely affected.

The key here is the word “significantly”—but arguably the Ontario government’s evisceration of benefits, proposed interference with pensions, and dictation of salary freezes should constitute interference significant enough for the Supreme Court to shut down all or most of the provisions of McGuinty’s legislative rampage. While we cannot guarantee that will be the outcome it is reasonable to hope that the Supreme Court will follow the law it laid down in *BC Health*.



## Updated Contract Language

*Incorporated into the new Collective Agreement*

### Partial-Load Teachers

Article 26.10 D (*new*)

Subject to the application of Articles 2.02 and 27.06 A, where the college determines that there is a need to hire a partial-load employee, it will give priority in hiring to current partial-load employees whose contracts will expire prior to the start of the assignment and partial-load employees whose contracts have ended within six months of the start of the assignment if the following conditions are met:

- (i.) The partial-load employee must have previously been employed as a partial-load employee for at least 10 months of service as defined in 26.10 C within the last 4 academic years.
- (ii.) The partial-load employee previously taught the courses that form the new partial-load assignment.

*This will mean that partial-load teachers will have to watch for when the college re-offers courses they have taught in the past 6 months. Very few partial-load positions are posted and often there is a short lead time before a partial-load assignment begins. Accordingly, partial-load faculty need to monitor the programs and courses closely at the start of the term to determine if there is an assignment they are entitled to be given priority for in hiring.*

The offer of partial-load employment is conditional on the college subsequently determining there is sufficient enrolment to warrant the assignment being offered.

### Coordinators

Article 14.03 A (Amendments in bold)

*This requires the manager to specify the tasks assigned to the coordinator prior to the assignment. This also clarifies that coordinators do not carry out any managerial or supervisory functions.*

Coordinator Allowance – Coordinators are teachers who in addition to their teaching responsibilities are required to provide academic leadership in the coordination of courses and/or programs. Coordinators report to the academic manager who assigned their specific duties, **which shall be determined prior to the acceptance of the designation, subject to changes as circumstances require.** It is understood that coordinators do not have responsibility **for the supervision or** for the disciplining of teachers in the bargaining unit. It is not the intention of the Colleges to require employees to accept the designation of coordinator against their wishes.

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## Housekeeping Amendments

### 1. Article 4 No Discrimination Bullying Psychological Harassment

Article 4.01 A amended “**handicap**” to “**disability**” and to include in the prohibited grounds: “**gender identity**” and “**gender expression**”

### 2. Article 14 Salaries

The salary grid and related sections in Articles 14 (full-time) and 26 (partial-load) will be re-dated with no change to the salary figures.

### 3. Article 26 Partial-Load

Article 26.08 C Sick Leave Plan – Bridging Benefit (re-worded)

Partial-load employees hired up to and including March 31, 1991, who were re-hired within 6 months of the end of any contract, or who were re-hired within 6 months of any approved leave of absence or where upon termination there was a written contract for future employment as a partial-load employee shall be covered by the cumulative sick leave plan which was in place for the full-time academic employees hired up to and including March 31, 1991.

Partial-load employees hired on or after April 1, 1991 are covered by the short-term disability plan described in Article 17 as modified by articles 26.08 A and 26.08 B but will also enjoy the bridging provisions as set out above.

### 4. Article 36 Duration

Article 36.01 amended to reflect Collective Agreement from **September 1, 2012**, to **August 31, 2014**.

### 5. Appendix IV Joint Insurance Committee

Specifications for Public Tender

4 B The specifications for tender will describe the benefits to be provided, the cost sharing arrangements, the past financial and experience history, the appropriate employee data, the format for the retention, illustrations for each coverage, the financial reporting requirements, and other parameters as appropriate. The tendering process will be conducted in accordance with the Council’s Procurement Policy. Tenders shall be entertained from any insurance carrier and such carrier may act solely on its own behalf of may arrange reinsurance as may be necessary.

# The Back Page

## Union College Committee Meetings

Under Article 7 of the contract, the parties may meet to discuss and try to resolve issues that may not be directly grievable, or which might be better resolved through discussion rather than through the grievance process.

We are currently meeting to deal with a number of such issues. In one case, faculty concerns reached us about a chair whose conduct may fall below the standard expected at the college. Rather than start with grievances, we will use the committee to acquaint senior college managers with the nature and extent of the problem and give them an opportunity to take corrective action.

A second matter involves an admission by the college that it has incorrectly paid many partial load faculty due to errors in determining steps. Our position is that partial loads must be properly paid, and in any event must not be subjected to claims by the college for any repayment. The college agrees.

We are also asking the college to re-examine the parking permit system for partial loads, which currently requires them to pay for parking for the intersession week, even though they are not paid for that week.

## Problems with Health Benefits, Sick Leave or Disability?

The health benefit plans can be complex and difficult to navigate. This is especially so for people who are ill and off work on STD or LTD. Coping with the college "wellness" office and Sun Life can be irksome when you are unwell. College return to work procedures are not clear, and the form we are required to complete if absent for longer than 3 days on sick leave is not a model of clarity.

If you have questions or run into problems email the Equity VP, Beth Agnew ([bagnew@opseu560.org](mailto:bagnew@opseu560.org)) or the Vice President, Jonathan Singer ([jsinger@opseu560.org](mailto:jsinger@opseu560.org)) or the Chief Steward ([lolivo@opseu560.org](mailto:lolivo@opseu560.org)). If they can't answer your questions or sort out the problem they will call on the OPSEU Benefits Counsellor, Kim Macpherson ([kmacpherson@opseu.org](mailto:kmacpherson@opseu.org)). In addition, if you are having problem with health benefits or LTD you can have the Sun Life decision reviewed by the Joint Insurance Committee.

- Full-time faculty earn 20 sick days per year at 100% of salary each September 1<sup>st</sup> which accumulate in a sick leave bank if not used. Despite the attempts by management to strip this benefit, we were successful in keeping it.
- If you are sick for more days than you have in your sick leave bank you are covered at 75% of regular pay until you are eligible to go on Long Term Disability
- If you are denied LTD, you should appeal the decision to the Joint Insurance Committee. We pay 100% of the premium, so Sun Life is no more than an administrator of our plan. We can often resolve the matter on appeal. Some faculty in these circumstances have sued Sun Life, often on a doctor's advice. If you should find yourself in this position, consult the union before hiring a lawyer at your own expense.

The college often attempts to return an employee to his or her job with accommodation for any limitations that result from an illness or injury. In completing a return to work form for the college, it is wise to consult the union before you and your doctor complete the form. The college is not entitled to know the diagnosis but does need to know what limitations, restrictions or accommodation is required for you to return to work. Some care needs to be taken with the language used to describe the limitations.